



Ohio School Boards Association Capital Conference and Trade Show

November 13 – 16, 2011

Greater Columbus Convention Center
Columbus, Ohio

Bad behavior beyond the school yard

Legal

Monday, November 14, 2011

2:00 p.m.

C 210–212

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OSBA leads the way to educational excellence by serving Ohio's public school board members and the diverse districts they represent through superior service and creative solutions.

Ohio School Boards Association

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Cyberbullying and Sexting: Bad Behavior Beyond the Schoolyard

OSBA Capital Conference
November 14, 2011

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“Cyberbullying” defined


- Model policy defines cyberbullying as:
 - Electronically transmitted acts, i.e. internet, cell phone, PDA or wireless handheld device that student has exhibited toward another particular student more than once **and** the behavior both:
 - Causes mental or physical harm to the other student; and
 - Is sufficiently severe, persistent or pervasive that it creates an intimidating, threatening or abusive educational environment for the other student



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“Cyberbullying”

- The anonymity of the Internet allows for increased malice and cruelty
- Not being face-to-face removes social cues
- 24/7 access allows bullies to act immediately on their impulses
- Electronic mobs can form rapidly and effortlessly
- No safe haven from cyberbullying




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“Cyberbullying”

- In 2009 study, 20% of all teenagers (10-18) reported being bullied online in the past year.
- 17% faced cyberbullying more than once within the previous 30 days.
- Occurs in chat rooms and on sites like Facebook and MySpace.
- YouTube incidents are growing rapidly


Cyberbullying Research Center
www.cyberbullying.us



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“Cyberbullying”


- According to ODE:
- Fifty percent of students are bullied at some time—ten percent regularly
- Every seven minutes a child is bullied
 - Four percent of time adult intervenes
 - Eleven percent of time peers intervene
 - Eighty-five percent of time – no intervention



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Forms of “Cyberbullying”


- Impersonating target on-line, making harmful comments to others
- Verbal attacks on blogs, websites and social media sites
- Posting or circulating cruel or embarrassing photos or videos
- Text attacks
- Formspring posts



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Forms of “Cyberbullying”


- Using websites or social networks to post cruel, embarrassing information about others
- Stealing others’ name and password and posting rumors or gossip
- Altering photographs using PhotoShop to humiliate others
- Posting or forwarding confidential conversations for all to see



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Harmful Effects


- Lowered self-esteem, increased suicidal tendencies, fear, frustration, anger, depression, school avoidance
- Tendency to avoid friends and activities
- Less likely to report than targets of traditional bullying – may tell peers rather than adults
- May act out with violence



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Potential Criminal Liability


- Cyberbullying not a discrete offense
- Perpetrators can be charged with menacing, aggravated menacing, menacing by stalking or telecommunications harassment
- School resource officers receive training on cyberbullying



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School District Liability


- Mentor, Ohio cases
- Three families have sued district and administrators, claiming school district was aware of bullying and didn't do anything
- One case dismissed on procedural issue



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Mentor Suicides


- Federal court dismissed second case in June, 2011
- Court found that district did not have "special relationship" with student or "heightened level of responsibility for his care and protection."
- Third case remains pending



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School District Liability

- Cyberbullying can also be a civil rights offense.
- If harassment is based on race, gender, national origin, or disability, district should investigate under harassment and anti-discrimination policies.
- U.S. Department of Education, Office of Civil Rights, Dear Colleague Letter, Harassment and Bullying




- <http://www2ed.gov/print/about/offices/list/ocr/letters/colleague-201010.html>

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Senate Bill 127 and House Bill 155 (Jessica Logan Act)


- Introduced 3/22/2011
- Requires school's harassment policy to address conduct on bus and off-campus conduct that materially disrupts educational environment
- Requires districts to provide anti-bullying training to all teachers, administrators, counselors, nurses, and school psychologists, regardless of funding.



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Senate Bill 127

- Expands definition of bullying to include acts committed through use of cell phone, computer, pager, personal communication device or other electronic communication device.




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Senate Bill 127

Anti-bullying policy must:


- Provide for possible suspension of students who engage in cyberbullying
- Provide means for anonymous reports
- Provide for discipline for false reports
- Provide strategies to protect against retaliation



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Role of Teachers and School Staff


- Teachers and school staff who witness or receive reports of bullying, harassment or intimidation should:
 - Promptly notify building administrator
 - Give administrator any formal reports
 - If informal complaint, file written incident report, including witness statements



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Response to Cyberbullying


- Non-disciplinary
 - Counsel students about definitions of harassment, bullying, and intimidation
 - Discuss potential consequences
 - Require training
 - Notify parents
- Disciplinary
 - Suspension or expulsion after due process depending upon severity of offense
- Referral to authorities where appropriate



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Obstacles to Discipline


- Schools can discipline for on campus conduct or conduct at school activities or that uses school equipment
- Can schools punish students for off-campus, online behavior without violating the First Amendment?



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Overview of First Amendment


- Generally prohibits government – including public schools – from proscribing speech based on the ideas expressed.
- General exceptions include fighting words, inciting speech, obscenity, defamation, and true threats.



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Additional Exceptions in School Settings


- Speech causes a "substantial disruption"
- Speech is lewd, vulgar, or profane
- Speech is school-sponsored and punishment furthers a legitimate pedagogical concern
- Speech can reasonably be perceived as promoting illegal drug use



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How Can Schools Comply with First Amendment?


- If the speech causes a substantial disruption or will foreseeably cause a substantial disruption, schools can punish for off-campus speech



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What is Substantial Disruption?


- High school students made video rant about another student, calling her "ugly" and "slutty" and posted it on YouTube
- The video was made entirely off-campus, but the bully's target was upset and missed some classes
- Perpetrator suspended – parents sued based on First Amendment
- Court found in favor of perpetrator – found disruption at school was only minimal



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What is Substantial Disruption?


- Student created website at home that included derogatory, profane, offensive and threatening comments, pictures and sounds.
- Principal and teacher took threats seriously and student was expelled.
- Court upheld expulsion over 1st amendment challenge – site was accessed and viewed at school creating a disruption.



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What is Substantial Disruption?


- Student created web page with parody obituaries for other students
- Visitors to site voted on who would die next and more obits followed
- Website described on evening news as "hit list"
- Student expelled, then modified to suspension
- Court held no substantial disruption




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What is Substantial Disruption?

- Student created MySpace webpage called SASH
- Postings ridiculed another student
- Student filed harassment complaint
- Webpage was created for purpose of "inviting others to indulge in disruptive and hateful conduct" toward another student
- Creator suspended for 5 days for creating hate website – 90 day "social suspension"
- Court upheld suspension – targeted attack caused substantial disruption
- Court of Appeals affirmed July 27, 2011




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Prevention of Cyberbullying

- Limit access to social networking sites at school or during school hours
- Enforce cell phone policies at school
- Teach digital citizenship to students
- Educate parents and students about the dangers of social networking and cyberbullying – more than lectures




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Prevention of Cyberbullying

- Educate staff, students and parents on bullying and anti-harassment policies
- Offer a method of anonymous reporting such as an online form or Kelo slots:
<http://www.couragepac.com/mother-of-taunted-teen-who-died-speaks-at-medina-anti-bullying-event/>




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Interventions


- Collect and analyze data; determine nature of problems
- Enlist peers to help targets
- Avoid sex role stereotyping
- Encourage communication, friendship, assertive behavior and character education
- Model positive, respectful behavior



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Responding to Cyberbullying

- Supervise and discipline offending students fairly and consistently
- Provide adult supervision during free time at school, including hallways
- Maintain contact with parents and guardians of involved parties
- Provide counseling if needed




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Responses to Cyberbullying

Develop safety plan for targets and aggressors


- Monitor parties involved in previous bullying incidents and intervene if problem recurs
- Check with targets to ensure there is no further bullying or retaliation




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Reporting of Cyberbullying

- Reports should be given to parent or guardian of victim while respecting statutory privacy rights of aggressor
- Must post on district website:
 - Number of verified incidents
 - Location of incidents




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Responses to Cyberbullying

- Allegations of criminal misconduct reported to law enforcement
- Cooperate with any investigation
- May be concurrent investigation
- Consider whether conduct also violates policy or student's civil rights
- Reinforce mandated reporting




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"Sexting"

- Sexting has been defined as "the practice of sending or posting sexually suggestive text messages and images, including nude or semi-nude photographs, via cellular phones or over the Internet."
- In a 2008 survey of 653 teens, 20% indicated they had sent or posted nude or semi-nude pictures or videos of themselves
- Often leads to or is related to cyberbullying




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Sexting

- According to 2011 MTV/Associated Press survey:
 - One in three 14-24 year olds have engaged in some form of sexting
 - 15% have sent nude pictures of self (half felt pressured to send)
 - 21% received nude pictures or videos of others
 - 33% received texts or online messages with sexual words


www.athinline.org



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Law regarding "Sexting"


- Current law doesn't address minors sending or possessing nude images – can be charged with felony for producing, distributing or possessing child pornography (ORC §2907.323)
- 2907.323 – pandering sexually oriented material involving a minor
- Can be issued sex offender status



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Law regarding "Sexting"


- Ohio House Bill 53, House Bill 80 and Senate Bill 103 would make "sexting" a first degree misdemeanor-potential six months in jail and fine of \$1,000
- Potential felony charge where there is malicious intent
- ACLU recommends non-criminalization of sexting



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"Sexting" Example


- 16-year-old girl emailed several nude photos and videos to her 17-year-old boyfriend
- After the boy turned 18 and the couple broke up, the boy sent the photos to more than 70 people
- The boy was convicted of distributing child pornography and now must register as a sex offender



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“Sexting” Example


- Young girls took pictures of themselves in training bras at slumber party
- Circulated pictures
- Prosecutor gave choice of diversion program or prosecution – had to write about what they did wrong
- 3 girls challenged on First Amendment grounds



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Sexting and Cyberbullying


- Jessica Logan – student in Sycamore Community School District
- Took nude picture on cell phone
- Other students circulated nude picture through cell phones
- Target complained to guidance counselor – referred to SRO
- SRO told students to delete photos
- SRO talked to prosecutor who said he couldn’t do anything else



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Sexting and Cyberbullying


- Harassment intensified after report
- Target subject to derogatory remarks and epithets (slut, whore, skank)
- Target harassed by phone and on-line
- Students threw things at target at school and graduation
- Target committed suicide after graduation



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Sexting and Cyberbullying


- Parents sued students, school, SRO and City who employed SRO
- Court dismissed SRO and City on qualified immunity grounds
- Case against school district still pending
- *Logan v. Sycamore Community School Bd. of Ed.*, 2011 U.S. LEXIS 10505 (S.D. Ohio 2011)



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Dealing with Sexting


- Develop policy on the appropriate use of mobile devices
- Explicitly prohibit sexting in policy
- Notify students in policy that administration may search cell phones if they have reasonable suspicion that the search will reveal violation(s) of school rules
- Review policy with students
- Distribute and train staff on policy, investigation procedures, and interventions



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4th Amendment


- Students have legitimate expectation of privacy in school
- School employees may search based on reasonable suspicion (reasonable belief that search will uncover evidence that student has violated law or school rules)
- Search should not be overly broad or intrusive
- Search must be limited to objective.



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Cell Phone Search


- Must have reasonable belief that search of cell phone will reveal violation of school rule or law
- Must limit search to all that might contain evidence of violation
 - Possession
 - Cheating
 - Use during school hours



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Cell Phone Search


- Student's phone seized for violation of possession and use rule
- Administrators viewed photos on phone and student expelled based on content of photos
- Court upheld expulsion against 4th amendment challenge



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Cell Phone Search


- Student's phone confiscated for violation of possession rule
- Administrators accessed directory and called other students
- Administrators accessed voicemail and text messages and had instant message conversation with brother
- Parents sued alleging violation of 4th amendment and Pa. Wiretap act
- Court held seizure was justified, but search was not



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Guidelines


- If you merely suspect sexting, do not search cell phone without students' and parents' consent
- But if you see evidence of sexting on a cell phone, a search of text messages is justified but must be reasonable in scope.
- Have another administrator present for search.



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Guidelines


- Notify parents immediately
- Report sexting to the police and, where appropriate, child protective services
- **DO NOT** transfer evidence to or store evidence on personal or school computer, phone or PDA—turn all evidence over immediately
- Discipline the students involved equally




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Resources

- Stop Bullying Now – US HHS DOE
- Ohio Commission on Dispute Resolution and Conflict Management
- Ohio Attorney General's office
- Ohio Resource Network
- Education Commission of States
- Measuring Bullying, Victimization, Perpetration and Bystander Experiences, A Compendium of Assessment Tools, stopbullying.gov/references
- ABC Family – Delete Digital Drama




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Resources


www.stopbullyingnow.hrsa.gov/kids/
www.connectsafely.org
www.athinline.org
www.isafe.org
www.PointSmartClickSafe.org
[www.OhioAttorneyGeneral.gov/InternetSafety Training](http://www.OhioAttorneyGeneral.gov/InternetSafetyTraining)
www.cyberbullying.us
www.osbf.net/what-we-do/b4usend



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Questions?



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